

Mar 20 10 15 AM '97 Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 92-291
Table of Allotments,) RM-8133
FM Broadcast Stations.)
(Cambridge and St. Michaels,)
Maryland))

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 6, 1997

Released: March 17, 1997

By the Commission:

1. The Commission has before it an Application for Review filed by CWA Broadcasting, Inc. ("CWA Broadcasting") directed to the staff Memorandum Opinion and Order in this proceeding, 10 FCC Rcd 8080 (1995). Prettyman Broadcasting Company, Inc. ("Prettyman Broadcasting") filed an Opposition to Application for Review and CWA Broadcasting filed a Reply to that Opposition. For the reasons discussed below, we are granting the Application for Review. As a result of this action, we are reallocating Channel 232A from Cambridge to St. Michaels, Maryland, and are modifying the construction permit for Station WFBR to specify St. Michaels as the community of license.

Background

2. At the request of CWA Broadcasting, permittee of Station WFBR, Channel 232A, Cambridge, Maryland, the Notice of Proposed Rule Making in this proceeding proposed the reallocation of Channel 232A from Cambridge to St. Michaels, Maryland, and modification of the Station WFBR construction permit to specify St. Michaels. The Report and Order dismissed the proposed reallocation, 9 FCC Rcd 2767 (1994). In doing so, the staff referred to the fact that CWA Broadcasting was granted its construction permit for the Channel 232A allotment at Cambridge in a comparative hearing. In the decision awarding CWA Broadcasting the construction permit, the Administrative Law Judge based his decision on the "qualitative enhancements" of substantial radio broadcast experience, enhanced by minority ownership, and past civic activities within the service area. 3 FCC Rcd 6481, 6488 (ID 1988), affirmed, 4 FCC Rcd 4676 (Rev. Bd. 1989), rev. denied, 5 FCC Rcd 1294 (1990). That action is now final.

Against this background, the staff referred to our decision in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 5 FCC Rcd 7094 (1990), in which we stated that we will not accept a reallocation proposal if the permittee had received in a comparative hearing a "decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community." 5 FCC Rcd at 7097. Inasmuch as the sole principal of CWA Broadcasting was awarded a qualitative enhancement for past civic activities within the service area, the staff determined that the CWA Broadcasting proposal was within the ambit of that proscription and dismissed the reallocation proposal. Report and Order in MM Docket No. 92-291, 9 FCC Rcd 2767 (1994). Upon reconsideration, the staff reaffirmed its determination that the CWA Broadcasting proposal was within our policy of not accepting such proposals and, therefore, denied CWA Broadcasting's Petition for Reconsideration. Memorandum Opinion and Order in MM Docket No. 92-291, supra. In that reconsideration action, the staff explained that it believed that the civic activities were part of the qualitative enhancement "package" relied upon by the Administrative Law Judge to award the construction permit to CWA Broadcasting. 10 FCC Rcd at 8081.

3. In support of its Application for Review, CWA Broadcasting contends that the civic activities referred to in the comparative proceeding do not constitute a "decisionally significant preference" within the meaning of Community of License, supra. As such, CWA Broadcasting views the dismissal of its Petition for Rule Making as arbitrary and capricious. Finally, CWA Broadcasting argues that it was error for the staff not to consider the fact that its sole principal, Charles W. Adams, Jr., is a minority broadcaster. In its Opposition, Prettyman Broadcasting, licensee of Station WICO-FM, Channel 232A, Salisbury, Maryland, argues that there is nothing in the record of this proceeding which would warrant Commission review of this matter. Prettyman Broadcasting also contends that the three qualitative enhancements in this proceeding should be treated "as a package" and should not be assigned "separate weights."

4. We are granting the Application for Review. In reaching this decision, it is first necessary to review the decision awarding the underlying construction permit to CWA Broadcasting in a comparative hearing. Originally, four applications were designated for a comparative hearing. 2 FCC Rcd 5915 (1987). The final comparison in this proceeding involved CWA Broadcasting and Big Bay Broadcasting. Both Charles W. Adams, the sole principal of CWA Broadcasting, and Robert Purcell, the sole principal of Big Bay Broadcasting, would move to Cambridge and operate the station, and both were given 100% credit for integration of ownership and management. Neither party has other broadcast interests. Mr. Adams was granted the construction permit on the basis of qualitative enhancements consisting of three distinct elements. Specifically, he was given qualitative enhancements for minority status, 36 years of radio broadcasting experience, and past civic activities within the proposed service area. Regarding civic activities, between 1966 and 1980, he served as master of ceremonies at the Cambridge Elks Lodge for social events for approximately 20 hours per year. Between 1966 and 1978, he had a similar arrangement with the Elks Lodge in Easton, Maryland. Inasmuch as Easton will continue to be within the proposed 1 mv/m contour of a Station WFBR assigned to St. Michaels, the only relevance in the Cambridge comparative proceeding regarding civic

activities involved 20 hours per year as master of ceremonies at the Cambridge Elks Lodge between 1966 and 1980.

5. In accordance with Community of License, we are then required to determine whether the Cambridge civic activity "is decisionally significant." We have done so in this instance. Had the comparative proceeding been for St. Michaels, the Cambridge civic activity would not have been "decisionally significant" and CWA Broadcasting would have prevailed in that proceeding as well. CWA Broadcasting's qualitative enhancement would have been diminished only by the elimination of the relatively minor civic activities factor. The significant minority status and prior broadcast experience enhancements would have remained. Cf. West Michigan Broadcasting Company v. FCC, 735 F.2d 601 (D.C. Cir. 1984). Furthermore, we are not asked to judge the comparative weight of the remaining qualitative enhancements because the competing applicant, Big Bay Broadcasting, had no qualitative enhancements. In view of the above, there is no basis under the comparative hearing proscription in Community of License not to accept this reallocation proposal.

6. After careful consideration of the underlying reallocation proposal, we are also reallocating Channel 232A to St. Michaels and modifying the Station WFBR construction permit to specify St. Michaels.¹ Reallocating Channel 232A to St. Michaels results in a preferential arrangement of channels as required by Modification of FM and TV Authorizations to Specify a New Community of License, *supra*. In reaching this determination we compared the existing versus the proposed arrangement of allotments using the FM priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² In this instance, reallocating Channel 232A to St. Michaels would be preferred under priority (3) as a first local service. Cambridge will continue to be served by local Stations WCEM and WCEM-FM. See Marion and Orrville, Alabama, 6 FCC Rcd 3482 (1991); Bolivar and Nixa, Missouri, 6 FCC Rcd 3648 (1991); Fruitland and Weiser, Idaho, 7 FCC Rcd 7538 (1992); Mora, Bosque Farms and Socorro, New Mexico, 8 FCC Rcd 791 (1993); Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 3181 (1995).

7. Accordingly, pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 2, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

¹The reference coordinates for Channel 232A at St. Michaels are 38-49-17 and 76-17-27. In order to accommodate a Channel 232A allotment at either Cambridge or St. Michaels, it was necessary to order Station WICO-FM, Channel 232A, Salisbury, to change its channel to Channel 284A. As stated in the earlier staff Memorandum Opinion and Order, Preyman Broadcasting is entitled to reimbursement for this channel change regardless of the outcome of this proceeding.

²The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

<u>Community</u>	<u>Channel No.</u>
St. Michaels, Maryland	232A
Cambridge, Maryland	292A

8. IT IS FURTHER ORDERED, That pursuant to Section 1.420(i) of the Commission's Rules and Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WFBR, Channel 232A, Cambridge, Maryland, IS MODIFIED to specify St. Michaels, Maryland, as the community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules;

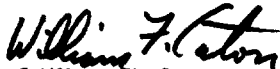
(c) Nothing contained herein shall be construed to authorize a change in transmitter location or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

9. IT IS FURTHER ORDERED, That the aforementioned Application for Review filed by CWA Broadcasting, Inc. IS GRANTED to the extent indicated above.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary